

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI**

**DATED 11<sup>th</sup> August, 2011**

**Petition No. 402 (C ) of 2010**

**Harika Cable Vision**

**.... Petitioner**

**Vs.**

**Sun 18 Media Services South Pvt. Ltd.**

**....Respondent**

**BEFORE:**

**HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON**

**HON'BLE MR. P.K.RASTOGI, MEMBER**

For Petitioner

Mr. Yoginder Handoo, Advocate

For Respondent

Mr. Nittin Bhatia, Advocate

Mr. Abhishek Malhotra, Advocate

**J U D G M E N T :-**

The Petitioner is a multi service operator operating in the town of Tenali in the District of Guntur Andhra Pradesh. For the said purpose, it had entered into a subscription agreement on or about 10.3.2010 with the

respondent which is a broadcaster. The area of its operation, according to the petitioner is five Mandals in the said district as would appear from a plan appended to the petition which, however, according to the respondent is confined to the part of the town of Tenali only.

For the purpose of extending its area of operation in two other Mandals being Guntur Mandal and Chebrolu Mandal, a request was made by the petitioner on or about 9.4.2010. As no reply was received from the respondent, a reminder therefor was sent on 4.5.2010 stating :-

“I am here with enclosing copies of the letters dated 2.4.2010, 9.4.2010 and the reply dated 30.4.2010. On pursuing all our earlier requests kindly permit us to expand the near by area and control the illegal acts of M/s. Tenali Communications. If you permit us, we are ready to pay for the increased connectivity.”

Along with the said letters dated 9.4.2010 and 4.5.2010, the petitioner did not supply the ‘Service Line Reports’. The petitioner through its General power of Attorney Holder Shri K Anil Kumar filed a petition before this Tribunal which was marked as petition no. 259 (C ) of 2010. Inter alia on the premise that the said petition in the name of Shri K Anil Kumar, the General Power of Attorney Holder of the Petitioner, was not maintainable,

the said petition was withdrawn on or about 28.10.2010 with liberty to file a fresh petition in the name of the petitioner herein.

The present petition was filed on or about 19.11.2010.

The petitioner, apart from the aforementioned letters also served on the respondent the maps for the existing area as also the proposed expanded areas.

The petitioner issued a few letters to respondent prior to filing of the said petition.

The respondent in its reply, however, contends:-

1. The petitioner is a defaulter.
2. The petitioner is guilty of transgression of the agreed area.
3. The petitioner has not furnished the requisite details so as to claim its right to supply of decoders.

In view of the rival pleadings of the parties, by an order dated 31.3.2011, the following issues were framed:-

“(i) Whether the respondent is obliged in terms of the Telecom Regulatory Authority of India Interconnect Regulations to provide signals to the Petitioner for the proposed new areas?

(ii) Whether the Petitioner has provided the requisite details to the Respondent for entering into an agreement form for the new areas?

(iii) To what relief, if any, the petitioner is entitled to?"

In support of its case, the petitioner examined Shri K Anil Kumar; whereas the respondent examined Shri K Srinivas, its authorized representative.

Shri K Anil Kumar was cross examined on 26.4.2011; whereas Shri K Srinivas was cross examined on 1.7.2011.

It now stands admitted that during the said period, the petitioner sent various E-Mails to the respondent 's witness including a postal registration certificate as is required under Rule 3 of the Cable TV Network Rules, 1994 for all its proposed areas of operation. The Respondent, however, has brought on record a corrigendum issued to the said purported postal registration certificate, said to have been issued by the Sub Post Master, Tenali in terms whereof its area of operation was confined to the town of Tenali only. Shri K Anil Kumar in his cross examination, however, contended that he had not received a copy thereof.

Despite the same, the petitioner has filed another postal registration certificate dated 27.5.2011 whereby Shri K Venkateshwar Rao has been permitted to operate in the town of Guntur, Urban and Rural. No postal registration certificate, however, has been produced in respect of the Chebrolu Mandal.

So far as, the question of the alleged dues from the petitioner is concerned, our attention has been drawn to a statement of account of the respondent from a perusal whereof it appears that a sum of Rs. 44,347.50 P was due to the respondent with interest.

In the said accounts, towards the dues of Sun Distributors Services a sum of Rs. 44,347.50 P has been shown, whereas an excess payment of Rs. 11,314/- is said to have been made by the petitioner and thus the total amount due is Rs. 33,003.50 P.

Mr. Handoo would contend that on or about 30.6.2011 a further sum of Rs. 40,000/- has been paid. It is, not clear as to whether the said amount was deposited towards the subscription fees for the month of June or towards the arrears.

Mr. Handoo, furthermore, has drawn our attention to a statement of account at page 46-U of the Evidence Folder wherein the arrears for Sun Distributor Services (SDS) is found to be NIL. No name of any subscriber has been mentioned therein. The said document is said to be a part of an E-Mail sent to respondent by petitioner. It is, however, difficult for us to arrive at a definite conclusion that the said purported statement of account pertains to petitioner.

We, therefore, are of the opinion that for the aforementioned purpose reconciliation of accounts between the parties would be necessary.

So far as the Respondent's allegation against the petitioner for transgression of the area is concerned, the only evidence which is available on record is the minutes of the meeting held on 10.3.2010.

It reads as under:-

“Both parties discussed various issues and settled out of court as follows:

Mr. Anil Kumar requested Mr. Naidu to reduce his connectivity from 10000 to 3000 in Tenali town Mr. Chandrasekhar Naidu agreed to reduce the same from 1<sup>st</sup> April'10 onwards.

M/s. Harika Cable vision has entered into an agreement with Channel Plus for 3000

Connectivity in Tenali town and a copy of the same was provided to Mr. Anil Kumar.

Mr. Anil Kumar undertakes to restrict their area of operations and also pay the monthly subscription charges regularly in future.

Mr. Naidu requested Mr. Anil Kumar to pay the pending due amount of Rs.3,90,961/- till date in his A/C ID. 30019811 immediately. Mr. Anil Kumar agreed to pay the said due amount in two installments i.e., Rs. 2 lakhs will be paid on or before 31.03.2010 and Rs. 1,90,961/- on or before 30<sup>th</sup> April'2010.

Mr. Anil Kumar undertakes to withdraw the petition No. 228 (C ) 2009 pending before the Hon'ble TDSAT on the next date of hearing i.e., 12.03.2010."

However, apart therefrom, no other evidence has been brought on record.

Mr. K Venkateshwar Rao also did not raise any such contention in the evidence. Moreover, from a perusal of the joint survey report held with Zee Turner Ltd., it appears, that although the petitioner had laid optical fiber cables from Tenali Town to Guntur Town Via Chebrolu, it had not been found to be operating either in Guntur Mandal or Chebrolu Mandal.

Indisputably, the petitioner had not supplied the details of the local cable operators in the Guntur area or Chebrolu area as is required under Clause 9.2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations 2004, as amended from time to time (The Regulations). The petitioner is said to have sent an SLR to Mr. K Srinivas of respondent through E-Mail.

We may notice the statement of Mr. K Srinivas in regard to the defences raised by the respondent.

“(witness is shown para 2 of his affidavit)

Q.2: Except for your statement in para 2 of your affidavit is there anything on record to suggest that the respondent had suffered any loss or damage?

A: Yes.

Q.3: What are your responsibilities as Area Manager?

A: In our territory all collections and piracy etc.

(witness is shown para 3 of his affidavit)

Q.4: Is there anything on record to substantiate your statement made in para 3 of your affidavit?

A: Yes.

Q.5: Has the respondent issued any communication to the petitioner alleging unauthorized transmission or piracy as alleged by you in para 3 of your affidavit?

A: One minutes of meeting at page 41 of the Evidence Folder.

Q.6: I put it to you that you have made an incorrect statement in para 3 of your affidavit and the same is only an after thought?

A: It is not.

Q.7: Has the respondent sent any communication to the petitioner alleging outstanding dues?

A: Our office people have sent a letter to the petitioner.

Q.8: Which is this letter that you are talking about?

A: I have to check my records.

Q.9: I put it to you that you are deliberately trying to avoid this question as no such letter exists?

A: It is incorrect.

Q.10: Who is the distributor of the respondent for the areas of Tenali and Guntur?

(Ld. Counsel for the respondent objects on the ground that area of Guntur is not a subject matter of the instant case.)

A: Amabati Communication for Tenali division and C R Koteswar Rao for Guntur divison.

Q.11: What is your E-Mail ID?

A: srinivas.k@sun18s.in.

Q.12: Is this your official ID and do you regularly check your mails?

A: Yes.

Q.13: Has the respondent or its distributor namely Ambati Communications sent any statement of account to the petitioner?

A: Exactly I do not know. I have to check my records.

Q.14: Have you received any E-Mail from the petitioner on 30.6.2011 forwarding you the E-Mail of your distributor who provided the petitioner with statement of account?

(Ld. Counsel for the respondent objects on the ground of the question being beyond pleadings.)

A: Exactly I do not remember.

(witness is confronted with a document containing 15 pages.)

Q.15: Does the E Mail bear your E Mail ID and is addressed to you?

A: Yes.

Q.16: Is this the Mail received by you?

(Ld. Counsel for the respondent objects on the ground of the question being beyond pleadings.)

A: I do not remember and I have to check my records.

(witness opens up his E Mail record in the courts computer and checks it.)

Yes, I have received this E Mail.

Q.17: Other than this E Mail, have you received any other E Mails from the petitioner?

A: yes, I have received some Mails from the petitioner.

(The above document is marked as Ex. A.)

(witness is confronted with another Mail containing 2 pages.)

Q.18: when did you last check your E Mail?

(Ld. Counsel for the respondent objects on the ground that question is beyond pleadings and subsequent document.)

A: Two days back.

Q.19: Did you receive this E Mail?

A: Yes.

(E Mail document is marked as Ex. B.)

(witness is confronted with a E Mail document dated 21.6.2011 containing 7 pages.)

Q.20: Have you received this E Mail?

(Ld. Counsel for the respondent objects on the ground that question is beyond pleadings and subsequent document.)

A: Yes.

(E Mail document is marked as Ex. C.)

Q.21: Is it correct that the petitioner has sent you its SLR?

A: I do not remember. I think petitioner has not given any SLR.

(Witness is confronted with E-Mail dated 17.6.2011 containing 2 pages)

Q.22: Have you received this E-Mail?

(Ld. Counsel for the respondent objects on the ground that question is beyond pleadings and subsequent document.)

A: Yes.

The same is marked as Ex. D.

Q.23: I put it to you that petitioner had no outstanding towards the respondent?

A: Now, the petitioner has no outstanding. Previously it had outstanding towards the respondent.

Q.24: I put it to you that previously also the petitioner had no outstanding towards the respondent?

A: It is incorrect.

Q.25: Why the respondent is refusing to provide its signals to the petitioner to operate in the proposed areas?

A: The petitioner has not given detailed OFC diagram, schematic and proposed area SLR and latest entertainment tax and other documents.

Q.26: What do you mean by other documents?

A: Postal Registration Certificate for the proposed area.

Q.27: If all this information is given to you, will you provide the signals?

A: No. He has already been given signals for another area for which outstanding. are there.

Q.28: Which are the areas for which you claim that petitioner has outstanding?

(The witness requested to refresh his memory by seeing SMS sent by his Field Executive in his mobile. He was allowed to open SMS account of his mobile.)

A: These are rural areas like Vallabhapuram, Chinnagadelavarru, Dantaluru, Aremandapata, Erukalapudi, Alapadu, Morampudi and Thummapudi.

Q.29: Who and how many are the operators operating in these areas who have direct subscription agreements with you?

A: In every area there is an operator but they are getting signals through the petitioner.

Q.30: I put it to you that you are giving a false statement and that in all the areas you are giving signals to operators directly by decoders and the petitioner is not giving the signals of the respondent

to any of the operators operating in the areas as mentioned by you?

A: It is incorrect.

Q.31: Please show me where in your affidavit have you stated that the petitioner cannot be given signals for the proposed areas as the petitioner has an outstanding in the eight areas as mentioned by you in answer to the aforesaid question?

A: It is not mentioned.

Vol. In affidavit we have not mentioned outstandings but have mentioned about the piracy.

Q.32: Have you filed any evidence to show that the petitioner is pirating your signals as alleged by you?

(After a long pause and perusal of case record, witness states)

A: No.

(witness is shown Ex. PW-1/8 at page 34 of the Evidence Folder.)

Q.33: Have you received letter dated 19.2.2011?

A: I do not remember.

Q.34: I put it to you that pages 36 to 39 containing the cable registration certificate, entertainment tax registration certificate, pole permission as well as OFC diagram and schematic were provided to the respondent through your counsel?

A: I do not remember.

Q.35: I put it to you that you are deliberately trying to avoid the answer?

A: It is incorrect.

(witness is confronted with E-Mail dated 25.2.2011 containing 3 pages)

Q.36: Have you received this E Mail?

(Ld. Counsel for the respondent objects on the ground that question is beyond pleadings and subsequent document.)

A: Yes.

The same is marked as Ex. E.

Q.37: I again put it to you that you have received the cable registration certificate, entertainment tax registration certificate, pole permission as well as OFC diagram and schematic?

A: It is incorrect.

Q.37: In your affidavit where have you stated that you have not received cable registration certificate, entertainment tax registration certificate, pole permission as well as OFC diagram and schematic?

A: We have mentioned so in para 4 at Page 43 of my affidavit.”

All the grounds raised by the Respondent for not providing signals to the petitioner's network are non existent except furnishing of the SLR.

The list of the cable operators for the proposed areas, ought to have been furnished by the petitioner so as to enable the respondent to verify the same, Sending of an E-Mail to the respondent's witness may or may not be sufficient for issuance of a direction upon the respondent to supply signals of its channels to petitioner's network.

Mr. Srinivas has received an E-Mail but then the same is not decisive. We may place on record that Mr. Anil Kumar in his evidence stated that he had not sent the said SLR.

In his cross examination, he stated:-

“Q: Did you provide the respondent with the subscriber base for your proposed areas till date?

A: No.

Vol. Right now, I am not having any subscriber base there. When the respondent permits me to operate in the proposed area, I will provide the subscriber base as and when I start my operation.

(Witness is shown page 11 of the petition)

Q: Have you cleared the amount of Rs. 3,90,961/- as agreed to be paid by you in the minutes of the meeting dated 10.3.2010?

A: Yes.

Vol. Not as on this date but after reconciling the accounts, I have cleared the total outstanding amount.

Q: Have you filed any proof/receipt in support of the payment made by you?

A: We have filed some receipts.

( Witness points out at page 48, 85, 86) and some more I may not remember now.

Q: Is postal registration mandatory condition for starting a cable network?

A: Yes.

Q: Do you have the postal registrations for the additional areas you propose to connect?

A: Yes.

Q: Have you provided the said postal registration certificate?

A: I have provided the same to the respondent in the meetings and also to the counsel for the respondent on 15.2.2011. Also I have sent it to the respondent (Ex. PW-1/8 colly.)

(Witness points out at page 135 of the paper book. The same is marked as Ex. X)

Q: After receiving postal registration certificate Ex.-X, has the petitioner received any other communication/letter from the postal department?

A: I do not remember.

Q: I put it to you that you are deliberately avoiding to answer the above question?

A: It is incorrect.

(Witness is confronted with copy of a document which is letter dated 7.3.2011 addressed by the Department of Posts to the petitioner. The same is marked as document A for the purposes of identification.)

(Ld. Counsel for the petitioner objects on the ground that the witness cannot be confronted with the said document which is a photocopy.)

Q: Have you received this letter?

A: To my knowledge, we have not received.

Q: I put it to you that you have deliberately concealed the fact about the receipt of this letter?

A: It is incorrect.

Q: I put it to you that you do not have the postal registration for the additional areas of Guntur and Chebrole, you propose to start your operation?

A: It is incorrect.

It is incorrect to suggest that I have not provided complete details relating to my subscriber base and operators despite repeated requests made by the respondent in this regard.

It is incorrect to suggest that I have not cleared the entire outstanding dues payable to the respondent.

It is incorrect to suggest that the present petition is a gross abuse of the process of law and filed to harass the respondent.

It is incorrect to suggest that I have illegally connected to additional areas.

It is wrong to suggest that I have deposed falsely and my affidavit is false.”

Although he has denied the said suggestions, evidently there is no material on record to show that there has been a strict compliance of Clause 9.2 of the Regulations.

Another objection which has been taken by the respondent is that the petitioner has not obtained any pole permission. Mr. Anil Kumar has

been cross examined extensively on the said issue. However, now it appears that the concerned authority of the Andhra Pradesh State Electricity Board had granted permission to petitioner for laying the cables from Tenali to Guntur Via Chebrolu being the date 26.6.2010. Ordinarily, we would not have encouraged such a litigant to fill up the lacuna in his pleadings and evidence by supplying documents at a subsequent stage.

In terms of Clause 3.5 of the Regulations, the broadcaster is to make an offer of supply of signals of its channels within a period of 60 days from the date of receipt of the first request. The law, however, presumes that at least the basic informations required therefor would be supplied. In this case, the compliance of the statutory requirements have been made only during pendency of this petition and that too after the cross examination of petitioner's witness was over. Moreover, the petitioner now contends that it had set up a separate head-end at Guntur. If that be so, the respondent had a right to inspect the said head-end.

Mr. Handoo, however, has drawn our attention to a recent order of this Tribunal being Harika Cable Vision Vs. Maa TV being Petition no. 401 (C ) of 2010. We following the said order, in the peculiar facts and

circumstances of this case and without creating any precedent in this behalf direct that the respondent should enter into negotiations with the petitioner on the basis of the offer made by it and also on the basis of a evidence which it may produce at a meeting with regard to subscriber base in the light of Clause 9.2 of the Regulations.

The respondent may also consider the question that according to petitioner, although it had laid cables but had not started any operation in the Guntur Mandal and Chebrolu Mandal. There furthermore cannot be any doubt or dispute that the petitioner must satisfy the respondent that it is otherwise entitled to operate in the expanded area in accordance with law and in particular it has a valid postal registration certificate therefor.

The petitioner furthermore shall satisfy the respondent that no amount is owing and due from it in terms of the existing agreement or otherwise. The petitioner must also give an undertaking that it shall not operate in any other area apart from the one for which the agreement is to be entered into.

The respondent will consider the informations supplied to it during pendency of this petition and thus would be entitled to ask for any other or further document/information so as to enable it to consider supply of

signals to the petitioner on reasonable terms and on a non-discriminatory basis. Indisputably both the parties would be bound to comply with the statutory regulations.

This petition is disposed off with the aforementioned directions but having regard to the conduct of the petitioner, there shall be no order as to costs.

.....  
**(S.B.Sinha)**  
**Chairperson**

.....  
**(P.K.Rastogi)**  
**Member**

**../GM/**